

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

DWIGHT RODGERS,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.:
	)	2:06-CV-1067-WKW-SRW
	)	
v.	)	
	)	
CRACKER BARREL OLD	)	
COUNTRY STORE, INC.,	)	
	)	
Defendant.	)	

**PLAINTIFF'S MOTION TO SUBSTITUTE EXHIBIT A ATTACHED TO  
PLAINTIFF'S RESPONSE TO  
JUDGE'S AUGUST 28, 2007 SHOW CAUSE ORDER**

COMES NOW Dwight Rodgers, Plaintiff herein, and files this Motion to SUBSTITUTE Affidavit to Plaintiff's Response to United States District Judge's Show Cause Order and states the following:

Plaintiff filed a response to August 28, 2007 Show Cause order which had as Exhibit A - Affidavit of Attorney Monica York. Plaintiff wishes to substitute EXHIBIT A for new Affidavit which clarify's more specifically when Plaintiff's Georgia counsel emailed Plaintiff's Alabama counsel.

Plaintiff's Georgia counsel received in the mail the show cause order on Wednesday, August 29, 2007 the same day she was attempting to coordinate the electronic filing with Plaintiff's Alabama counsel which is also the day she emailed Plaintiff's Alabama counsel.

To be more clear, Plaintiff's Georgia counsel has clarified paragraphs 4 and 6 of her affidavit and would like this affidavit substituted for the one that was original filed as Exhibit A to the Show Cause Response.

**CONCLUSION**

\_\_\_\_ For the foregoing reason Plaintiff request that his motion to substitute be granted.

Respectfully submitted this 5 th day of September, 2007.

/s/Byron Perkins  
State Bar No. ASB - 0183 - N75B  
Attorney for Plaintiff

The Cochran Firm  
505 North 20<sup>th</sup> Street - Suite 825  
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s/Monica A. York  
Monica A. York  
State Bar No. 781153  
Attorney for Plaintiff

ATTORNEYS  
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CRACKER BARREL OLD	)	
COUNTRY STORE, INC.,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2007, I electronically filed **PLAINTIFF'S MOTION TO SUBSTITUTE EXHIBIT A ATTACHED TO PLAINTIFF'S RESPONSE TO JUDGE'S AUGUST 28, 2007 SHOW CAUSE ORDER** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Jennifer Busby  
Ashley H. Hattaway  
Burr & Forman LLP  
3400 Wachovia Tower  
420 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

Respectfully submitted,

/s/Byron Perkins

Byron Perkins  
State Bar No. ASB - 0183 - N75B  
Attorney for Plaintiff

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s/Monica A. York  
Monica A. York  
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## EXHIBIT A

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CRACKER BARREL OLD	)	
COUNTRY STORE, INC.,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF ATTORNEY MONICA A. YORK**

Monica A. York, appeared before me the undersigned officer, duly authorized to administer oaths in the State of Georgia and having been duly sworn states the following:

1.

I, Monica A. York, am over the age of 18 and I am competent to give this Affidavit. I understand that it will be used in the above-captioned and numbered civil action.

I have personal knowledge of and am competent to make the following statements:

2.

I drafts a response to Defendant's Motion for Summary Judgment in above-captioned and numbered civil action.

3.

I was under the erroneous understanding that I was unable to register with the Middle District of Alabama CM/ECF and therefore did not do so when I applied to appear pro hac vice in the above captioned and numbered civil action.

4.

It was late in the evening on Monday August 27, 2007 the day I was to file the document that I realized I was not registered with the Middle District of Alabama CM/ECF and could not upload the document. Since I was unable to do so, I placed the response in the mail to Defendant's counsel.

5.

I calculated the day for filing as Monday August 27, 2007, based upon, 21 days to respond, plus the 3 day mailing rule which had the day fall on Sunday. That meant we had until Monday to file.

6.

Having failed to upload on Monday, August 27, 2007, after speaking with Plaintiff's Alabama Counsel I emailed to Plaintiff's Alabama Counsel the documents

to be uploaded to the court on Wednesday, August 29, 2007.

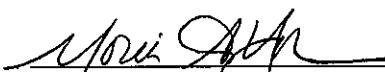
7.

In the process of coordinating filing the documents, Plaintiff's counsel received the Judge's Show Cause Order. Plaintiff's counsel responds to this Order, accordingly and attaches this affidavit as additional evidence to explain the delay.

8.

I hereby declare under penalty of perjury that the foregoing Affidavit is true and correct to the best of my personal knowledge.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
Monica A. York  
State Bar No. 781153

Sworn to and subscribed before me  
this 5 – day of September, 2007.

